



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA-R04-RCRA-2012-0124; FRL-9735-2]

**Tennessee:** Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Tennessee has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Tennessee's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on *[insert date 60 days after the date of*

*publication*] unless EPA receives adverse written comment by *[insert date 30 days after the date of publication]*. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R04-RCRA-2012-0124** by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: [johnson.otis@epa.gov](mailto:johnson.otis@epa.gov)
- Fax: (404) 562-9964 (prior to faxing, please notify the EPA contact listed below).
- Mail: Send written comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
- Hand Delivery or Courier. Deliver your comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.

Instructions: We must receive your comments by *[insert date 30 days after the date of publication]*. Please refer to Docket Number **EPA-R04-RCRA-2012-0124**. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You may view and copy Tennessee's application and associated publicly available materials from 8:00 a.m. to 4:00 p.m. at the following locations: EPA, Region 4, RCRA Division, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960, telephone number: (404) 562-8483; and from 8:00 a.m. to 4:30 p.m. at the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243-1535; telephone number: (615) 562-0780. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

**FOR FURTHER INFORMATION CONTACT:** Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; telephone number: (404) 562-8481; fax number: (404) 562-9964; e-mail address: [johnson.otis@epa.gov](mailto:johnson.otis@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **A. Why Are Revisions to State Programs Necessary?**

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### **B. What Decisions Have We Made in this Rule?**

We conclude that Tennessee's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Tennessee final authorization to operate its hazardous waste program with the changes described in the authorization application. Tennessee has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect

in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Tennessee, including issuing permits, until the State is granted authorization to do so.

**C. What is the Effect of this Authorization Decision?**

The effect of this decision is that a facility in Tennessee subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Tennessee has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which includes, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports;
- enforce RCRA requirements and suspend or revoke permits; and
- take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Tennessee is being authorized by today's action are already effective, and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before this Rule?**

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of

today's **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

**E. What Happens if EPA Receives Comments that Oppose this Action?**

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

**F. What has Tennessee Previously been Authorized for?**

Tennessee initially received final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820), to implement the RCRA hazardous waste management program. We granted authorization for changes to Tennessee's program on the following dates: June 12, 1987, effective August 11, 1987 (52 FR 22443); June 1, 1992, effective July 31, 1992 (57 FR 23063); May 8, 1995, effective July 7, 1995 (60 FR 22524); August 24, 1995, effective October 23, 1995

(60 FR 43979); May 23, 1996, effective July 22, 1996 (61 FR 25796); January 30, 1998, effective March 31, 1998 (63 FR 4587); September 15, 1999, effective November 15, 1999 (64 FR 49998); October 26, 2000, effective December 26, 2000 (65 FR 64161); December 26, 2001, effective February 25, 2002 (66 FR 66342); April 11, 2003, effective June 10, 2003 (68 FR 17748); March 14, 2005, effective May 13, 2005 (70 FR 12416); and May 11, 2006, effective July 10, 2006 (71 FR 27405).

**G. What Changes are We Authorizing with this Action?**

On December 15, 2008, and June 1, 2011, Tennessee submitted final complete program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. EPA now makes an immediate final decision, subject to receipt of written comments that oppose this action, that Tennessee's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Therefore, we grant Tennessee final authorization for the following program changes:

<b>Description of Federal Requirement</b>	<b><u>Federal Register</u> Date and Page</b>	<b>Analogous State Authority<sup>1</sup></b>
215- Cathode Ray Tube (CRT) Exclusion	71 FR 42928 07/28/06	1200-01-11-.01(2)(a); 1200-01-11-.02(1)(d)1(xxiv)(I)-(IV); 1200-01-11-.02(6)(a)-(d)
216- Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas	73 FR 57 01/02/08	1200-01-11-.01(2)(a); 1200-01-11-.02(1)(d)1(xii)(I)
217- NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments	73 FR 18970 04/08/08	1200-01-11-.06(15)(a); 1200-01-11-.06(15)(a)2(i) and (iii); 1200-01-11-.09(8)(a)2(iii)(III)
218- F019 Exemption for	73 FR 31756	1200-01-11-.02(4)(b)1; 1200-01-

Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes	06/04/08	11-.02(4)(b)2(iv)(I) and (II)
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<sup>1</sup>The Tennessee provisions are from the Tennessee Hazardous Waste Management Regulations effective September 12, 2009.



#### **H. Where are the Revised State Rules Different from the Federal Rules?**

We consider Tennessee Hazardous Waste Management Regulation 1200-01-11-.02(4)(b)2(iv)(II) to be more stringent than the Federal counterpart at 40 CFR 261.31(b)(4)(ii) because the State requires generators to maintain records on site for no less than five (5) years to prove that exempted sludges meet the conditions of the F019 listing. The Federal requirement at 40 CFR 261.31(b)(4)(ii) requires generators to maintain such records for no less than three (3) years. This five-year document retention requirement is part of the Tennessee authorized program and is federally enforceable.

EPA cannot delegate or authorize the Federal requirements at 40 CFR 261.39(a)(5), 261.40 and 261.41. Although Tennessee has adopted these requirements at 1200-01-11-.02(6)(b)1(v), 1200-01-11-.02(6)(c) and 1200-01-11-.02(6)(d), the State correctly notes that EPA will continue to implement these requirements.

#### **I. Who Handles Permits After the Authorization Takes Effect?**

Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not authorized.

**J. What is Codification and is EPA Codifying Tennessee's Hazardous Waste Program as Authorized in this Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart RR for this authorization of Tennessee's program changes until a later date.

**K. Administrative Requirements**

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the

Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective [*Insert date 60 days from date of publication*], unless objections to this authorization are received.

#### **List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: September 12, 2012.

A. Stanley Meiburg,  
Acting Regional Administrator,  
Region 4.

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